

95-01079

NOTICE  
of  
DECLARATION AND CONDITIONS  
of  
AGREEMENT FOR WATER SUPPLY TO BRIARCLIFF SUBDIVISION

Whereas, the legal description of the Briarcliff Subdivision is as follows:

Lots 1 through 21, inclusive, being a platting of Tax Lot 12, located in the Northeast 1/4 of Section 27, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska.

Whereas, the owner of record of lots 1 through 21 of Briarcliff Subdivision is Hawk Inc., located at 224 Westgate, Omaha Nebraska, 68028.

Whereas, Hawk Inc. and D. Joe Ruhaak are the owners of record of lot 24B Cinnamon Acres Subdivision and improvements thereon to be referred to as the "water system" as described as follows:

Private Water System- Sarpy County- Cinnamon Acres- #W-73-92.

Whereas, the owner of record of the "water system" has received certification and granted permit number NE31-20785 to operate a class "IV" Public Water System.

Whereas, the owners D. Joe Ruhaak, and Hawk Inc. hereby grants a perpetual and irrevocable agreement to supply the Briarcliff Subdivision with water from the "water system" described herein.

There will be no "special" connection fees or other charges placed upon the Subdivision as a whole, however, a usage fee on an individual basis of the owners of lots within the subdivision will be levied.

This agreement is binding upon Hawk Inc., D. Joe Ruhaak, their heirs and assigns.

REGISTERED NUMBER  
95-01079

55 JAN 26 PM 1:24

REGISTERED DEEDS

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF SARPY )

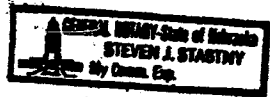
DATE 1-26-95

HAWK INC.  
by D. Joe Ruhaak (president)

D. Joe Ruhaak  
by D. Joe Ruhaak

On this 26<sup>th</sup> day of January, 1995, before the undersigned, a Notary Public duly commissioned and qualified for said County, personally came the individual whose name is subscribed above, to me known to be the identical person whose name is subscribed to the above and foregoing document and he acknowledged the execution thereof to be his voluntary act and deed.

Notary Public



RECORDER NOTE

Abstracted in Cinnamon Acres  
Regist of lot 24  
(1079) Page 1 of 3

Proof   
D.E.   
Verify   
Filmed \_\_\_\_\_  
Checked \_\_\_\_\_  
Fee \$ 26.00

State of Nebraska  
DEPARTMENT OF HEALTH

12-1-1994



THIS IS TO CERTIFY THAT Joe Ruhaak, Owner  
is hereby granted PERMIT NUMBER NE31-20785 to operate a Class IV  
Public Water supply system at Cinnamon Acres (Sarpy County)

This permit is valid for an indefinite period of time unless revoked for cause

2-22-94 Date Issued

Mark B. Gitter  
Director of Health

# STATE OF NEBRASKA

15-10-12

DEPARTMENT OF HEALTH  
B. Horton, M.D., M.S.P.H.

(402) 471-2341



February 17, 1994

E. Benjamin Nelson  
Governor

Mr. Joe Rahaak  
Cinnamon Acres  
224 Wegay  
Gretna, NE 68026

RE: PWS - Sarpy County - Cinnamon Acres - W-73-93 - Storage Reservoir, Pumping Station, Distribution System and "As-Built" Well - W-68-93 - Water Main Extension - Final Approval

Dear Mr. Rahaak:

We have reviewed your engineer's response letter and supporting documents regarding the deficiencies found during the December 22, 1993 final inspection of the above-referenced projects and addressed in our letter of January 12, 1994.

Based on the documents submitted to this Department concerning completion of the projects and as far as can be determined from the inspection, the projects appear to be constructed in accordance with the plans and specifications approved earlier by this Department.

Our final approval of this project is hereby granted.

Sincerely,

A handwritten signature in dark ink, appearing to read "Subhash D. Jha".

Subhash D. Jha, P.E., Supervisor  
Engineering Services Section  
Division of Drinking Water and  
Environmental Sanitation

SDJ:REL:jet

xc: Larry Hagewood, P.E.  
Roger Rhylander  
Scott Peterson

95-13080

DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF BRIARCLIFF SUBDIVISION  
IN SARPY COUNTY, NEBRASKA

THIS DECLARATION, made on the date hereinafter set forth, is made by HAWK, INC. A NEBRASKA CORPORATION owners of residential lots in the Briarcliff Subdivision, hereinafter collectively referred to as the Declarant."

PRELIMINARY STATEMENT

The Declarant is the owner of 75% of the residential lots located within Sarpy County, Nebraska and described as follows:

Lots One (1) through twenty-one (21), Briarcliff, a subdivision platted and recorded in Sarpy County, Nebraska, Tax Lot 12, Section 27, Township 14, Range 11, Sarpy County, Nebraska, 30.62 acres, more or less, commencing at the North Quarter corner of Section 27; thence Southerly to the Southwest corner of the N $\frac{1}{2}$  of the NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$ ; thence Northeasterly to the Northeast corner of the N $\frac{1}{2}$  of the NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$ ; thence Northerly to the Northwest corner of the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$ ; thence Easterly to the Northeast corner of the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$ ; thence Northerly to the Northwest corner of the E $\frac{1}{2}$  of the E $\frac{1}{2}$  of the W $\frac{1}{2}$  of the NE $\frac{1}{4}$ ; thence Westerly to the point of beginning, East of the 6th P. M., in Sarpy County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot".

The Declarant desires to (i) provide for the preservation of the values and amenities, (ii) for the maintenance of the character and residential integrity, (iii) and for the acquisition, construction and maintenance of Common facilities for the use and enjoyment of the residents of Briarcliff.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as is more fully described herein. The Lots, and each Lot is and shall be subject to all and each of the following conditions and other terms:

Counter 5  
Verify M  
C.E. T  
Proof T  
Firm g  
Map g  
Fee # 55.50  
Ck  C.

95 - 13080  
95 AUG 14 PM 12:28

**ARTICLES 1.  
RESTRICTIONS AND COVENANTS**

1. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or as a park, or for other non-profit use.

2. No residence, accessory building, fence, wall, driveway, patio, patio enclosure, swimming pool, basketball backboards, dog house, tree house, pool house, antenna satellite receiving station or "discs", flag pole, solar heating or cooling device, tool shed, wind mill or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any improvement be commenced, except for Improvements which have been approved by Briarcliff Architectural Review Committee as follows:

A. An owner desiring to erect an Improvement shall deliver one set of construction plans, landscaping plans and plot plans to the Briarcliff Architectural Committee (herein collectively referred to as the "plans"). The construction plans shall include at least four (4) exterior elevations, floor plan, foundation plan, and square footage. Such plans shall include a description type, color and use of materials proposed for the exterior of such improvement. Landscaping plans need not be submitted with the construction and plot plans, but must be submitted prior to landscaping improvements. Concurrent with submission of the plans, Owner shall notify the Briarcliff Architectural Committee of the Owner's mailing address.

B. The Briarcliff Architectural Review Committee shall review such plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by the Briarcliff Architectural Review Committee. In this regard, the Briarcliff Architectural Review Committee intends that the Lots shall be developed residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by the Briarcliff Architectural Review Committee to promote development of the Lots and to protect the values, character and residential quality of all Lots. If the Briarcliff Architectural Review Committee determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, the Briarcliff Architectural Review Committee may refuse approval of the proposed Improvement.

C. Written Notice of any approval or disapproval of a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans. Such notice shall be mailed approximately thirty (30) days after the date of submission of the plans.

D. No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by the Briarcliff Architectural Review Committee, or to control, direct or influence the acts of the Briarcliff Architectural Review Committee with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon the Briarcliff Architectural Review Committee by virtue of the authority granted to Briarcliff Architectural Review Committee in this Section, or as a result of any act or failure to act by the Briarcliff Architectural Review Committee with respect to any proposed Improvement.

E. All accessory buildings shall be reviewed by the Briarcliff Architectural Review Committee and will be reviewed for the appropriate square footage for said such lot. Metal buildings shall be constructed of roofing and siding that has factory applied paint. The construction of the residence must be started prior to the erection of any outbuildings. Blueprints, plot plan, and material lists must be submitted to the architectural committee for review, and written approval by the architectural committee must be granted prior to the commencement of any construction. The use of any accessory building shall be "personal" in nature and not related to an commercial activity, and must comply with any local, county, or city jurisdiction. Outbuildings must be completed within a period of six (6) months after start of construction.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height excluding basement. All houses must face the street unless approved otherwise by the Briarcliff Architectural Review Committee. The computation of living area shall be exclusive of porches, breezeways, and garages. The minimum dwelling size shall be as follows:

A. For a ranch style (one level) or split-entry home, the ground floor (or main level) shall contain not less than 2200 square feet of finished living area.

B. A split-level shall contain not less than 2200 square feet of finished living area, and a tri-level, or multilevel home, the top 3 levels shall contain a total of not less than 2500 square feet of finished living area.

C. For a 1 1/2 or 2 story home the total finished living area for 1st and 2nd floor shall contain not less than 2600 square feet.

D. Each residence shall include an enclosed, attached or built in three car garage.

4. The exposed front foundation walls and any foundation walls facing any street of all main residential structures must be constructed of or faced with brick, stone or other material approved by the Briarcliff Architectural Committee. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. All driveways must be constructed of concrete, asphalt, brick, or paving stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Unless other materials are specifically approved by the Briarcliff Architectural Review Committee, the types of roofing material that may be used on houses include tile, wood, asphalt, fiberglass, wood fiber (i.e., Masonite's Woodruff). Roofing material not to be used include metal, plastic, or rolled roofing.

5. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a lot and/or house as "For Sale". Provided, however, the foregoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by the developer of the subdivisions, its agents or assigns, during the construction and sale of the Lots.

6. No exterior radio or microwave antenna or towers are allowed. Television satellite discs are allowed but size and location must be approved by the Briarcliff Architectural Review Committee.

7. No visible outside repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. Overnight on-street parking of any vehicles is prohibited. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Section 8 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during the period of construction. All residential Lots shall provide at least a minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of Sarpy County, Nebraska.

9. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or other container shall be permitted unless completely screened from view, except for pickup purposes. No garden lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish or collected lawn cuttings shall be deposited on any street, road, or Lot with the exception of compost piles or as a mulch. Produce or vegetable gardens may only be maintained in rear yards.

10. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

11. No building or part of a building, residence, or accessory building shall be located on any lot nearer than fifty (50) feet to the front lot line, thirty (30) feet to a side lot line, and one hundred (100) feet to the rear lot line. Any lot that cannot accommodate the minimum front and back setbacks can apply for a variance when the plans and plot plans are submitted to the Briarcliff Architectural Committee.

15-13000

12. Not less than five (5) ornamental or deciduous shade trees must be planted on each lot in front of the front building line of any residence within 1 year after excavation for footings and thereafter maintained in good growing condition and replaced as necessary. Existing trees on lots cannot be removed without written permission from the Briarcliff Architectural Committee.

13. No wire, barbed wire, permanent snow fence, or stockade fence of any type shall be permitted, however, decorative fencing not over 4 feet high, such as split-rail type fencing shall be permitted. Chain link fencing will be allowed behind the back line of the residence. Privacy and safety fencing for swimming pool must be submitted and approved by the Briarcliff Architectural Committee.

14. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for dog houses. Dog houses shall only be allowed at the rear of the residence. No livestock or agricultural-type animals shall be allowed.

15. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

16. No lot shall be reduced from its original size without the written approval of the owners of at least 75% of the lots in the subdivision.

17. No structure of a temporary character, carport, trailer, basement, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. No structure or dwelling shall be moved from outside the Subdivision to any Lot without the written approval of the Briarcliff Architectural Review Committee.

18. All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

## ARTICLE II. HOMEOWNERS' ASSOCIATION

1. The Association. The Briarcliff Homeowners Association has been formed as a non-profit corporation under the laws of the State of Nebraska (the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots, including:

A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include, but not necessarily be limited to, a community well and potable water distribution system, recreational facilities such as playgrounds and parks; dedicated and non dedicated roads, paths, ways and green areas; street lighting; and signs and entrances for the Subdivision. Common Facilities may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association, or on property dedicated to a Sanitary Improvement District.

B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

C. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of the Subdivisions; and the protection and maintenance of the residential character of the Subdivision.

2: Membership and Voting. The Briarcliff Subdivision is divided into twenty-one (21) separate lots (referred to collectively as the "Lots"). The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

3. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

A. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities within the Subdivisions, and the enforcement of the rules and regulations relating to the Common Facilities within the Subdivisions. All acquisitions by the Board of Directors shall obtain the approval of seventy-five percent of the Members of the Association.

B. The landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks or public property within the Subdivisions.

C. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration

D. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverage for the Association, the Board of Directors of the Association and the Members.

E. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

F. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

G. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

H. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

I. General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

J. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

4. Mandatory Duties of Association. The Association shall maintain and repair any boundary fence, entrance monuments, and signs which have been installed by Declarant in generally good and neat condition.

5. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.



6. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues and assessments in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Developer.

7. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

8. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Sections 3 and 4 of this Article.

9. Annual Waiver of Board of Director's Dues. With the approval of seventy-five percent of the Members of the Association, payment of dues, exclusive of any other assessments, shall be waived for the Board of Directors. The above stated waiver of dues shall remain in effect during the tenure of each Board of Director not to exceed twelve (12) months. The Members of the Association shall be required to reauthorize the waiver of dues by vote on an annual basis.

10. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common facility, including fixtures and personal property related thereto, and related facilities.

11. Excess Dues and Assessments. With the approval of seventy-five percent of the Members of the Association, the Board of Directors may increase dues and/or assessments in excess of the maximums established in this Declaration. Dues are established at \$35.00 per month per lot.

12. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 5 above.

13. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessments shall be and become a lien as of the date such amounts first become due and payable.

14. Effect of nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues and assessment shall bear interest from the due date at the rate of nine percent (9%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

15. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

95-13090 F

**ARTICLE IV.  
EASEMENTS**

1. A perpetual license and easement is hereby reserved in favor and granted to Omaha Public Power District, US West Communications, Peoples Natural Gas, to the licensed operator of the Subdivisions community wells and potable water distribution system, and any company which has been granted a franchise to provide a cable television system within the Lots, their successors and assigns, to erect and operate, maintain, repair, and renew buried or underground water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat, and power and for all telephone and telegraph and message service and for the transmission of signals provided by a cable television system and the reception on, over, through, under and across a five (5) foot wide strip of land abutting the side boundary lines of the Lots; and sixteen (16) foot wide strip of land abutting the rear boundary lines of the Lots, and a ten (10) foot wide strip of land abutting the front boundary lines of the Lots.

**ARTICLE V.  
GENERAL PROVISIONS**

1. Except for the authority and powers specifically granted to the Board of Directors, the Board of Directors or any owner of a Lot named herein shall have the right to enforce by proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Board of Directors or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. The covenants and restrictions of this Declaration shall run with and bind the land perpetuity. This Declaration may be amended by an instrument signed by the owner of not less than seventy five percent (75%) of the Lots covered by this Declaration.

3. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

4. For a period of five (5) years from the date of the recording of this agreement, no building shall be erected, constructed, altered, placed or permitted to remain on any lot in said subdivision herein described until the plans and specifications have been approved in writing by Hawk, Inc. or Diamond Homes.

5. Enforcement shall be proceedings at law, or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages.

HAWK, INC. by:

(Seal)

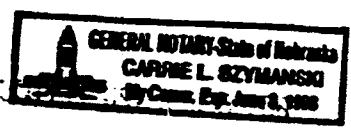
Donald Joe Rubaak  
Donald Joe Rubaak - President

Constance J. Rubaak  
Constance J. Rubaak - Sec/Treas.

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF )

On this 14th day of August, 1995, before the undersigned, a Notary Public duly commissioned and qualified for said County, personally came the individuals whose names are subscribed above, to me known to be the identical person(s) whose Donald Joe Rubaak & Constance J. Rubaak name(s) are subscribed to the above and foregoing Amendment to Covenants, and he/she acknowledged the execution thereof to be his/her voluntary act and deed.

Carrie L. Szymanski  
Notary Public



95-13080 G

Exhibit I

HOMEOWNERS ASSOCIATION

"Association" shall mean and refer to Briarcliff, Inc., a Nebraska non-profit corporation.

ARTICLE I

MEMBERSHIP AND VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership:

Class A. "Class A" members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. "Class B" member (s) shall be the Declarant and shall be entitled to (1) vote for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on December 31, 1999, or
- (c) the Declarant voluntarily waives its right to Class B voting privileges.

Section 2. Purpose and Responsibilities. The Association shall have the powers conferred upon not for profits corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

ARTICLE II

COVENANT FOR MAINTENANCE AND INSURANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. All subsequent purchasers shall take title subject to said lien and shall be bound to reimburse the Association as to the amount of any unpaid assessments. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall pass to subsequent purchasers, and shall be a continuing lien upon the property.

Section 2. Easement and Licenses. The Association and the Declarant reserve the right to grant such further easements and licenses under, upon or over said Lots as may be necessary or required by utilities furnishing gas, water, telephone, electrical and television or other utility services to said Properties. The Properties shall further be subject to existing easements for abutting roadways and right-of-ways.

ARTICLE III

PROPERTY RIGHTS

Section 1. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties.

Section 2. Exterior Maintenance. The Association shall provide maintenance of the streets. Each Owner shall provide, at his own expense, exterior maintenance upon his respective Lot including mowing, fertilizing, watering, planting of trees, shrubs, grass and snow removal on walks and drives. Each Owner of Lots shall be responsible for all maintenance and repair of his dwelling units and

95-13070 H

he shall not permit waste but instead shall in a timely fashion maintain the exterior appearance of his unit in a clean, uniform, and orderly manner free of discolored or peeling paint or stain. Each Owner shall be responsible for prompt repair of broken glass.

The Association shall install street lights along the streets as necessary, and enter into a lease agreement on a monthly basis with the appropriate utility company.

In the event any Owner fails in his maintenance obligations the Association Board, thirty (30) days after written demand, may at its election, perform the maintenance including but not limited to, painting, roofing, staining, repairing glass, maintaining or replacing trees, shrubs, bushes, rock walls, or otherwise, as may be necessary to cause the property to comply with this section. The cost of any Board ordered repair shall become a lien upon the Lot and Lots repaired without further Board action and the Owner (s) shall be personally obligated to reimburse the actual costs incurred. The Association may at its option elect to provide garbage and trash pick-up service, or any other exterior service, repair or maintenance, and may include the costs thereof in the assessments.

In the event that the need for maintenance or repair to Lots caused through the willful or negligent act of an Association member, family, or guests or invitees, the costs of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject, and such added assessment shall not be subject to the maximum assessment limitations herein contained.

**Section 3. Payment of Dues Assessments.** The annual assessments shall be payable in 12 equal monthly installments one month in advance on or before the first day of each month; provided, however, the Directors of the Association may establish a different method of payment upon notice to the Owners. Special assessments shall be payable in the manner, amounts, and times specified by the Directors.

**Section 4. Notice and Quorum.** Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be delivered either personally or by mail to all members not less than 10 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**Section 5. Rate of Assessment.** The total annual assessments shall be levied at an equal rate against each Lot.

**Section 6. Monthly Dues.** Unless excess dues have been authorized by the Members in accordance with Section 7, below, the aggregated dues which may become due and payable in any year shall not exceed the greater of:

- (a) Twenty-five (\$35.00) per Lot per month.

**Section 7. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall assessments as to all Association members on the first day of the month following the conveyance of title of said lot to the member. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

**Section 8. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of sixteen percent (16%) per annum or the highest lawful rate, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in proceedings in the nature of a Mechanics Lien foreclosure. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his Lot.

**Section 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessment those thereof.

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
99-019014

99 JUN 16 AM 11:58

*Glenn J. Lewing*  
REGISTER OF DEEDS

99-19014

Counter a  
Verify m  
D.E. S  
Proof S  
Fee \$ 85.50  
Ck  Cash  Chg

AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF BRIARCLIFF SUBDIVISION  
IN SARPY COUNTY, NEBRASSKA

THIS AMENDMENT TO DECLARATION, made as of March 31, 1999, is made by the undersigned owners of at least 75% of the residential lots in the Briarcliff Subdivision, hereinafter collectively referred to as the "Declarant" and amends the Declaration of Covenants, Conditions, Restrictions and Easements of Briarcliff Subdivision in Sarpy County, Nebraska, recorded in the office of the Sarpy County Register of Deeds August 14, 1995 as Instrument Number 95-13080 (the "Declaration").

The Declarant is the owner of at least 75% of the residential lots located within Sarpy County, Nebraska and described as follows:

Lots One (1) through twenty-one (21), Briarcliff, a subdivision platted and recorded in Sarpy County, Nebraska, Tax Lot 12, Section 27, Township 14, Range 11, Sarpy County, Nebraska, 30.62 acres, more or less, commencing at the North Quarter corner of Section 27; thence Southerly to the Southwest corner of the North 1/2 of the NW 1/4 of the SW 1/4 of the NE 1/4; thence Northeasterly to the Northeast corner of the N 1/2 of the NW 1/4 of the SW 1/4 of the SW 1/4 of the NE 1/4; thence Northerly to the Northwest corner of the SE 1/4 of the SW 1/4 of the NW 1/4 of the NE 1/4; thence Easterly to the Northeast corner of the SW 1/4 of the SE 1/4 of the NW 1/4 of the NE 1/4; thence Northerly to the Northwest corner of the E 1/2 of the E 1/2 of the W 1/2 of the NE 1/4; thence Westerly to the point of beginning, East of the 6<sup>th</sup> P.M., in Sarpy County, Nebraska.

The Declaration may be amended by the owners of not less than 75% of the Lots.

All capitalized terms shall have the meaning given in the Declaration. The Declarant desires to amend certain provisions of the Declaration.

NOW, THEREFORE, the Declarant hereby declares that the Declaration is amended as follows:

Article I, Section 2.E of the Declaration shall be deleted and the following inserted therefore:

99-19014A

E. All accessory buildings shall be reviewed by the Briarcliff Architectural Review Committee and will be reviewed for the appropriate square footage for such Lot. No metal buildings are allowed. The construction of the residence must be started prior to the erection of any outbuildings. All outbuildings must be frame buildings having the same siding and roofing as the residence located on the lot. Blueprints, plot plan, and material lists must be submitted to the architectural committee for review, and written approval by the architectural committee must be granted prior to the commencement of any construction. The use of any accessory building shall be "personal" in nature and not related to a commercial activity, and must comply with any local, county, or city jurisdiction. Outbuildings must be completed within a period of six (6) months after start of construction.

Article I, Section 3 of the Declaration shall be deleted and the following inserted therefore:

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two stories in height excluding basement. All houses must face the street unless approved otherwise by the Briarcliff Architectural Review Committee. The computation of living area shall be exclusive of basements, porches, breezeways, and garages. The three styles of dwellings allowed are ranch style, one and one-half story style and two-story style homes. The minimum dwelling size shall be as follows:

A. For a ranch style (one level), the ground floor (or main level) shall contain not less than 2,200 square feet of finished living area.

B. For a one and one-half story style home, the finished living area must total at least 2,600 square feet including at least 1,700 square feet of finished living space on the main floor.

C. For a two-story style home, the finished living area must total at least 2,600 square feet including at least 1,400 square feet of finished living space on the main floor.

D. Each residence shall include an enclosed, attached or built in three car garage. A tandem car space does not count as one of the required three car spaces.

Article II, Section 6(a) of Exhibit 1 to the Declaration shall be corrected to be Thirty-Five and no/100 Dollars (\$35.00) per Lot per month.

Except as amended by this amendment to Declaration, the Declaration is unmodified and in full force and effect.

99-19014B

Executed as of the date first above written.

Lot Number: 1

Owner(s):

*Edward J. Fleming*  
Edward J. Fleming

*Maureen E. Fleming*  
Maureen E. Fleming

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF SARPY    )

The foregoing instrument was acknowledged before me May 19, 1999  
by Edward J. Fleming and Maureen E. Fleming.



*Josephine C. Dupak*  
Notary Public  
My commission expires:  
April 21, 2003

49-19014C

Executed as of the date first above written.

Lot Number: 2

Owner(s):

*Damon G*  
Damon Castrop

*Brita M. Castrop*  
Brita M. Castrop

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF SARPY    )

The foregoing instrument was acknowledged before me 10<sup>th</sup>, 1999  
by Damon Castrop and Brita M. Castrop.



\_\_\_\_\_  
Notary Public  
My commission expires:  
*Mary Nadler 8-15-2001*



99-19014D

Executed as of the date first above written.

Lot Number: 3

Owner(s):

Robert J. Zink, Trustee  
Robert J. Zink, Trustee

Dorothy A. Zink  
Dorothy A. Zink, Trustee

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF ~~SARPY~~ DUGLAS)

The foregoing instrument was acknowledged before me on May 22, 1999  
by Robert J. Zink and Dorothy A. Zink, Trustees.



Scott Gramack  
Notary Public

My commission expires:  
1/1/2003

99-19014E

Executed as of the date first above written.

Lot Number: 4

Owner(s):

*[Signature]*  
Robert D. Binderup

*Kathleen A. Binderup*  
Kathleen A. Binderup

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF ~~SARPY~~ )  
                                  ) DOUGLAS

The foregoing instrument was acknowledged before me May 13, 1999  
by Robert D. Binderup and Kathleen A. Binderup.

*Susanne Poland*  
Notary Public  
My commission expires:





99-19014G

Executed as of the date first above written.

Lot Number: 9

Owner(s):

Michael J. Montemarano *[Signature]*  
Michael J. Montemarano

STATE OF NEBRASKA    )  
                                  )    ss.  
COUNTY OF SARPY    )

The foregoing instrument was acknowledged before me \_\_\_\_\_, 1999  
by Michael J. Montemarano.

\_\_\_\_\_  
Notary Public  
My commission expires:  
\_\_\_\_\_

99-190144

Executed as of the date first above written.

Lot Number: 11

Owner(s):

Michele Montemarano By D. Hunt  
Michele Montemarano

Concetta Montemarano By D. Hunt  
Concetta Montemarano

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF SARPY )

The foregoing instrument was acknowledged before me \_\_\_\_\_, 1999  
by Michele Montemarano and Concetta Montemarano.

\_\_\_\_\_  
Notary Public  
My commission expires:  
\_\_\_\_\_

99-19014E

Executed as of the date first above written.

Lot Number: 12 and 15

Owner(s): Paradise Homes

By *[Signature]*

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF SARPY )

The foregoing instrument was acknowledged before me May 5th, 1999  
by Jane Merimee of Paradise Homes.



*Jane E Merimee*  
Notary Public  
My commission expires:  
August 11, 2001

99-190145

Executed as of the date first above written.

Lot Number: 14

Owner(s):

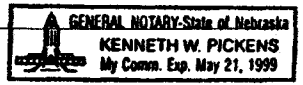
Eugene F. Steward  
Eugene F. Steward

Beverley R. Steward  
Beverley R. Steward

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF SARPY    )

The foregoing instrument was acknowledged before me 5/8/99, 1999  
by Eugene F. Steward and Beverley R. Steward.

Kenneth W. Pickens  
Notary Public  
My commission expires:



99-19014K

Executed as of the date first above written.

Lot Number: 16

Owner(s):

  
\_\_\_\_\_  
Dino Montemarano

  
\_\_\_\_\_  
Lisa Montemarano

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF SARPY    )

The foregoing instrument was acknowledged before me \_\_\_\_\_, 1999  
by Dino Montemarano and Lisa Montemarano.

\_\_\_\_\_  
Notary Public  
My commission expires:

\_\_\_\_\_



99-19014L

Executed as of the date first above written.

Lot Number: 19

Owner(s):

Kenneth L. Stine  
Kenneth L. Stine

Terry L. Stine  
Terry L. Stine

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF SARPY    )

The foregoing instrument was acknowledged before me May 12, 1999  
by Kenneth L. Stine and Terry L. Stine.

Janet Coleman  
Notary Public  
My commission expires:  
6-5-2002



99-19014m

Executed as of the date first above written.

Lot Number: 20

Owner(s):

*Al Meives III*  
Al Meives III

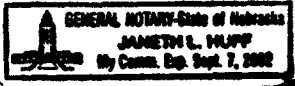
*Patricia A. Meives*  
Patricia A. Meives

STATE OF NEBRASKA )  
                  *Boyd* ) ss.  
COUNTY OF SARPY )

The foregoing instrument was acknowledged before me May 28 1999  
by Al Meives III and Patricia A. Meives.

*Janeck L. Klupp*  
Notary Public

My commission expires:  
9-7-2002



99-19014N

Executed as of the date first above written.

Lot Number: 21

Owner(s):

Karen T. Adams  
Karen T. Adams

Anthony Adams  
Anthony Adams

STATE OF NEBRASKA    )  
                                  )    ss.  
COUNTY OF SARPY    )

The foregoing instrument was acknowledged before me 5-6, 1999  
by Karen T. Adams and Anthony Adams.



Connie J. Ward  
Notary Public  
My commission expires:  
2-20-2001